

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Craig Casler, *as Trustee for the Heirs and
Next-of-Kin of Abby Rudolph, deceased,*

Case No. 18-cv-1020 (WMW/LIB)

Plaintiff,

v.

MEnD Correctional Care, PLLC et al.,

Defendants.

**FINDINGS OF FACT AND ORDER
APPROVING SECOND AND FINAL
DISTRIBUTION OF WRONGFUL-
DEATH PROCEEDS**

This wrongful-death action involves the alleged negligent care and treatment of Abby Rudolph. Before the Court is the petition of Plaintiff Craig Casler, as Trustee for the Heirs and Next-of-Kin of Abby Rudolph, seeking approval of the settlement of the above-captioned matter and distribution of settlement proceeds arising out of the settlement (the Petition). Casler consents to the distribution of settlement proceeds and waives the appearance and notice of hearing as allowed by Minn. Gen. R. Prac. 144.05. The Court, having reviewed the Petition, makes the following findings of fact:

1. On February 13, 2019, in the United States District Court, District of Minnesota, and with the consent of all of the next-of-kin, Craig Casler was appointed as trustee to maintain a wrongful death action on behalf of the next-of-kin of Abby Rudolph, pursuant to Minn. Stat. § 573.02.

2. The names, relationships, and addresses of Abby Rudolph's next-of-kin¹ are as follows:

<u>Name</u>	<u>Relationship</u>	<u>Address</u>
Steven Rudolph	Father	1300 Metropolitan Leavenworth, KS 66048
Allison Rudolph	Sister	1007 Parke Avenue South Glyndon, MN 56547
Jack Rudolph	Brother	1007 Parke Avenue South Glyndon, MN 56547

3. Casler, as Plaintiff, previously settled with Defendant MEnD Correctional Care, PLLC, and Michelle Pender, individually and in her capacity as Clay County Jail Nurse.

4. The Court previously dismissed Defendants Julie Savat, Amy Rood, Ryan Magnuson, Amber Nelson, Raynor Blum, Nancy Livingood, Ashley Johnson, Anastacia Hermes, Richard Stetz, Brianna Then, Kari White-Tuton, Joel Torkelson, Tiffany Larson, Justin Roberts, and Clay County, Minnesota. (Dkt. 93.) The remaining Defendants are Deborah Benson, Jana Bartness, Anthony Hanson, Cassie Olson, Devin Lien, and Lucas Heck.

5. Jill Rudolph, the previously appointed Trustee in this matter,² initially consulted attorney Mark Anderson of Anderson Law Offices, who referred Jill Rudolph to

¹ The Court has omitted the dates of birth of Rudolph's next-of-kin to protect their privacy. *See* Fed. R. Civ. P. 5.2(a). None of Rudolph's next-of-kin is a minor, however.

² Jill Rudolph died on December 20, 2018.

attorney Brandon Thompson, then of the law firm Robins Kaplan LLP and, currently, of the law firm Ciresi Conlin LLP. Thompson subsequently retained Vince Moccio of Bennerotte & Associates, who specializes in actions brought pursuant to 42 U.S.C. § 1983. Because of the complexity of the case, the costs involved, and the risk of not achieving a recovery, the attorneys and Jill Rudolph executed a retainer agreement that included a 40 percent contingent attorneys' fee and contingent repayment of costs.

6. The attorneys investigated this matter, which included evaluating Abby Rudolph's medical records, conducting medical research, and conferring with medical experts. In order to determine the nature and extent of the alleged negligence in this case, the attorneys consulted with experts in the fields of forensic pathology, addiction psychiatry and nursing. The attorneys analyzed whether the care that Rudolph received was consistent with accepted standards of medical practice and whether a deviation from accepted standards of medical practice played a substantial part in bringing about Rudolph's death.

7. Plaintiff subsequently commenced this lawsuit. Defendants made a settlement offer in the amount of \$150,000, which Plaintiff accepted. Under the terms of the agreement, the remaining Defendants Benson, Bartness, Hanson, Olson, Lien, and Heck will be voluntarily dismissed, and the \$150,000 settlement will be paid by Clay County and its insurer.

8. After discussions with his counsel, Plaintiff concluded that the settlement was fair and reasonable, and that it was, therefore, in the best interest of the next-of-kin of

Abby Rudolph to accept this offer of settlement and release from liability the remaining Defendants: Benson, Bartness, Hanson, Olson, Lien, and Heck.

9. Funeral and burial expenses for Abby Rudolph totaled \$7,898.38 and have been paid.

10. There are no medical expenses related to the negligence claimed by Plaintiff.

11. Under the terms of the retainer agreement, Plaintiff's attorneys are entitled to receive 40 percent of the gross amount of recovery, or \$60,000, in attorneys' fees. These attorneys' fees are divided among the law firms as follows: Anderson Law Office is entitled to 10 percent of the fee, or \$6,000; Bennerotte & Associates, P.A., is entitled to 45 percent of the fee, or \$27,000; and Ciresi Conlin LLP is entitled to 45 percent of the fee, or \$27,000.

12. Ciresi Conlin LLP and Bennerotte & Associates incurred out-of-pocket expenses that, under the terms of the retainer agreement, were advanced contingent on achieving a recovery. The total remaining out-of-pocket costs is \$12,335.59. Under the terms of the retainer agreement, Ciresi Conlin LLP and Bennerotte & Associates are entitled to reimbursement of these costs.

13. The next-of-kin have waived the requirement of a hearing on this matter. *See* Minn. Gen. R. Prac. 144.05. As there is no dispute over the distribution, Plaintiff seeks approval of the Petition without a hearing.

Based on the foregoing findings and all the files, records and proceedings herein,
IT IS HEREBY ORDERED:

1. The distribution of settlement proceeds for the wrongful death claim of Abby Rudolph, as set forth in the Petition of Plaintiff Craig Casler, as Trustee for the Heirs and Next-of-Kin of Abby Rudolph, is **APPROVED**.

2. Casler is authorized to distribute the recovered proceeds as follows:

- a. \$37,788.75 to Ciresi Conlin LLP for attorneys' fees and costs;
- b. \$28,546.84 to Bennerotte & Associates for attorneys' fees and costs;
- c. \$6,000.00 to Anderson Law Office for attorneys' fees;
- d. \$30,888.14 to Allison Rudolph;
- e. \$25,888.14 to Jack Rudolph; and
- f. \$20,888.13 to Steven Rudolph.

3. Casler is authorized to execute appropriate releases and any other documents necessary to finalize this portion of the settlement for the next-of-kin of Abby Rudolph.

Dated: February 10, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge